



FACT SHEET ON DISQUALIFICATION FROM MUNICIPAL DECISIONS PART 1: INTERESTS IN BUSINESS ENTITIES

The City's Ethics Ordinance includes laws that prohibit City Officials from influencing municipal decisions when those decisions are substantially likely to have a material financial effect on their economic interests. This fact sheet is one of a series of fact sheets designed to offer general conflict of interest guidance to City Officials who participate in making municipal decisions. This particular fact sheet is focused on conflicts that result from investments in business entities or from serving in a position of management in a business entity. Keep in mind that the information offered in this fact sheet should not be considered a substitute for the actual language contained in local and state law.

GENERAL RULES

- ❖ The Ethics Ordinance prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable (i.e., a realistic possibility) that the decision will have a “material financial effect” on any business entity in which the official, or a member of the official’s immediate family, has an investment worth two thousand dollars (\$2,000) or more. Such interests include things like ownership of a family business or stock in a publicly traded company.
- ❖ The Ethics Ordinance also prohibits City Officials from participating in a municipal decision if it is reasonably foreseeable that the decision will have a “material financial effect” on any business entity in which the official serves as a director, officer, partner, trustee, employee, or otherwise holds any position of management (even if the individual is not compensated for such services).
- ❖ The term “business entity” means any organization or enterprise operated for profit. It does not, on the other hand, include bona fide non-profit organizations or governmental agencies.
- ❖ The term “immediate family” means an official’s spouse (or registered domestic partner) and any dependent children. Under these rules, for example, a City Official whose spouse owns a billboard company may be unable to participate in a City decision to change zoning for outside advertising.
- ❖ You must consider your spouse’s or registered domestic partner’s investments in business entities for disqualification purposes even if you have an agreement (such as a pre-nuptial agreement) stating that you have no legal interest in the other person’s investments.
- ❖ If you have an investment in a business entity, you must also consider any parent, subsidiary, or affiliate of the business entity for disqualification purposes. Please contact the Ethics Commission for additional information regarding the criteria for a parent, subsidiary, or affiliate relationship.
- ❖ Whether the financial effect of a municipal decision on a business entity is “material” depends on the applicable facts. As a general rule, however, the financial effect will be “material” if the business entity is the subject of the decision, or if the decision will realistically affect the value of the business entity, as discussed below.

MATERIALITY – BUSINESSES THAT ARE THE SUBJECT OF THE DECISION

- ❖ The financial effect of a municipal decision on a business entity in which an official has a financial interest is “material” whenever the business entity:
 - ✓ initiates the proceeding in which the municipal decision will be made by filing an application, claim, appeal, or request for other government action concerning the business entity;
 - ✓ offers to make a sale of a service or a product to the City;
 - ✓ bids on or enters into a written contract with the City;
 - ✓ is the named manufacturer in a purchase order of any products purchased by the City, or the sales provider of any products to the City that aggregate to \$1,000 or more in any 12-month period;
 - ✓ applies for a permit, license, grant, tax credit, exception, variance, or other entitlement that the City may issue;
 - ✓ is the subject of any inspection, action, or proceeding subject to the City’s regulatory authority; or
 - ✓ is otherwise subject to an action taken by the City, the effect of which is directed solely at the business entity in which the official has an interest.
- ❖ In other words, when a business entity is the subject of a particular municipal decision or is significantly involved in the decision, the impact is considered “material” and disqualification is generally required.
- ❖ For example, Susan is a Deputy Director in the Purchasing Department. Her spouse owns a company that sells electronic parking meters and is responding to a City RFP. Because her spouse’s company is offering to sell a product to the City, the City’s purchasing decision will have a material financial effect on that company. Accordingly, Susan is disqualified from participating in the decision.
- ❖ Another example: Henry is a member of the Planning Commission. He is also a co-owner of a family construction business that has applied for a site development permit. If the permit comes before the Planning Commission, Henry must recuse himself because approving or denying the permit will have a material financial effect on a business entity in which he has a financial interest.
- ❖ There is an exception for travel payments made for official City business. A City Official who owns stock in American Airlines, for example, is not precluded from purchasing tickets on an American Airlines flight for City employees attending a work-related conference. Similarly, a City Official who owns stock in Hyatt Hotels may participate in a decision to obtain lodging at a Hyatt property for City employees touring an out-of-town facility.

MATERIALITY – BUSINESSES THAT ARE AFFECTED BY THE DECISION

- ❖ Even when a business entity is not the applicant, the bidder, the contracting party, or otherwise the subject of the municipal decision, a City Official may still have a disqualifying financial interest. The key is whether there is a realistic possibility that the municipal decision will change the price

of the entity's publicly traded stock or, if the entity is privately held, the value of the entity. Examples of such decisions include those that:

- ✓ authorize, prohibit, regulate or otherwise establish conditions for an activity in which the business entity is engaged;
 - ✓ increase or decrease the amount of competition in the field in which the business entity is engaged;
 - ✓ increase or decrease the need for the products or services that the business entity supplies;
 - ✓ make improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the business entity receives;
 - ✓ decide the location of a major development, entertainment facility, or other project that would increase or decrease the amount of business the entity draws from the location of the project; or
 - ✓ increase or decrease the tax burden, debt, or financial or legal liability of the business entity.
- ❖ For example, Jack is a Deputy City Attorney asked to work on an ordinance that would ban the smoking of e-cigarettes in all places of business. His spouse is an owner of a North Park vape lounge. Even though this particular establishment is not a party to, or the subject of, a City decision, the value of the business will be significantly impacted by a decision to ban its principal activity. Accordingly, Jack may not work on the ordinance.
- ❖ Another example: Carolyn is a Council Representative. Her husband owns one of the few local companies that sells pipe for underground water and sewage delivery. She may not work on a wastewater infrastructure ordinance that would increase the demand for the products the company sells because the ordinance would have a financial impact on the value of the company.
- ❖ Another example: Darren is a Program Manager in the Purchasing Department. He owns \$5,000 worth of Qualcomm stock. The City is considering purchasing several hundred cell phones from Motorola, a company that uses a Qualcomm processor in its cell phones. It is not realistic to conclude that the City's purchase would impact the price of Qualcomm stock. Accordingly, Darren's investment in Qualcomm does not disqualify him from participating in the decision.

INSIGNIFICANT EFFECTS

- ❖ Notwithstanding the rules set forth above, there are circumstances in which a municipal decision's financial effect is so minor that it does not rise to the level of being "material." In other words, a City Official does not have a disqualifying conflict of interest in a municipal decision if the financial effect of the decision is nominal or inconsequential.
- ❖ For example, Mary is a Deputy Director in Neighborhood Code Compliance who owns stock in Acme, Inc. worth \$4,500. Her department is considering Acme's request for a one week extension to remove graffiti from one of their buildings. Because the decision to grant or deny the request is inconsequential in terms of the financial impact on Acme, Mary is not disqualified from participating in the decision.

PUBLIC GENERALLY

- ❖ Even if the financial effect of a municipal decision on your business interest is material, you will not be disqualified from participating in that decision if you can establish that the financial effect on the business entity is indistinguishable from the financial effect on the public generally.
- ❖ A decision affecting a business entity is entitled to the “public generally” exception if the financial impact on the business entity is essentially the same as it is on at least 25% of all business entities located in the City of San Diego.
- ❖ When determining whether a municipal decision’s financial impact on your business interest is disproportionate to its impact on the City’s other business entities, consider these types of factors:
 - ✓ the business entity’s income producing potential;
 - ✓ the proximity of the business entity to the project that is the subject of the municipal decision;
 - ✓ when you have interests in multiple similar business entities, whether the municipal decision’s cumulative effect on those interests is greater than its effect on a single business entity; and,
 - ✓ when the decision imposes the same rate or percentage on all businesses, whether your interest is in an entity with a higher volume of business than other entities.
- ❖ In addition, the “public generally” exception will likely apply in the following special circumstances: (1) the imposition of taxes or assessments for water, utility, or other broadly provided public services applied equally or proportionally to everyone; (2) changes to parking rates, permits, and fees that apply to the entire City; (3) ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance, or improve public safety; (4) decisions that affect all renters of residential property; (5) situations in which the law requires a board or commission to contain appointees representing a particular trade or profession and there is no unique effect on the appointee; and (6) states of emergency. Contact the Ethics Commission for assistance with these circumstances.

CONTRACTS

- ❖ If the municipal decision involves a contract, be sure you also review the Ethics Commission’s “Fact Sheet on Financial Interests in a Contract.”

Determining whether or not you have a conflict of interest in a particular municipal decision can be a complicated matter. Do not hesitate to contact the Ethics Commission at (619) 533-3476 for additional assistance.

Rev. 5/8/15